

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 763 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

RANJITSINH GOVUBHA

Appearance:

Shri K.P.Rawal, Additional Public Prosecutor, for the Appellant - State.

Shri M.J.Buddhabhatti, Advocate, for the Respondent - Accused (Amicus Curiae)

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 05/12/96

ORAL JUDGEMENT

Being aggrieved by the leniency shown by the learned Chief Judicial Magistrate of Surendranagar in the matter of sentence after convicting the respondent accused of the offences punishable under Sections 304-A,

279 and 338 of the Indian Penal Code, 1860 (the IPC for brief) and under Sections 112 and 116 of the Motor Vehicles Act, 1939 (the Act for brief), the appellant State has invoked the appellate jurisdiction of this court under Section 377 of the Code of Criminal Procedure, 1973 (the Cr.PC) for brief) for enhancing the sentence imposed on the respondent - accused. By the aforesaid judgment and order of conviction and sentence, the learned trial Magistrate has sentenced the respondent - accused to simple imprisonment for three months for the offence punishable under Section 304-A of the IPC without imposing any separate sentence for the offences punishable under Sections 279 and 338 thereof and under Sections 112 and 116 of the Act.

2. The facts giving rise to this appeal move in a narrow compass. The respondent - accused carried about 24 persons belonging to one marriage party in his matador bearing RTO Registration No.GRA 9145 (the Motor Vehicle for convenience) on 3rd May 1984 from Limbdi. It is the case of the prosecution that the Motor Vehicle had a capacity to seat 12 passengers only. The marriage party set out in the Motor Vehicle for Vagadiya at about 6.00 a.m. on 3rd May 1984. It was driven by the respondent accused. After a brief halt for tea-break at Sayala, the Motor Vehicle proceeded further to its destination. There was an unmanned level-crossing near the railway station of Vagadiya. On both the sides of the level crossing, the danger warnings were displayed cautioning the driver about the unmanned level-crossing. It is the case of the prosecution that, without taking any precautionary measures, the respondent - accused carried his motor vehicle through the crossing and the incoming train by the name of Saurashtra Janata Express collided with it at about 8.45 a.m. on that day. Some nine passengers were instantly killed and the remaining were injured and were removed to one hospital at Limbdi. Some six out of them breathed their last during the course of treatment. Thus, in all fifteen persons lost their lives on account of rash and negligent driving of the Motor Vehicle by the respondent - accused resulting in its collision with a railway train. The other eight persons were seriously injured. The Motor Vehicle was practically smashed. The railway police was informed of the incident. The necessary complaint of the accident was lodged against the respondent - accused. The investigating machinery was set into motion on that account. On completion of the investigation, the chargesheet was submitted in the court of the learned Chief Judicial Magistrate of Surendranagar on 3rd September 1985 charging the respondent - accused herein

with the offences punishable under Sections 304-A, 338 and 279 of the IPC and Sections 112 and 116 of the Act. The charge was explained to the respondent - accused for the purpose of recording his plea on 5th February 1986. The respondent - accused did not plead guilty to the charge. He was thereupon tried. After recording the prosecution evidence and after recording the further statement of the respondent - accused under Section 313 of the Cr.PC and after hearing arguments, the learned Chief Judicial Magistrate of Surendranagar convicted the respondent - accused of the offences punishable under Sections 304-A, 279 and 338 of the IPC and under Sections 112 and 116 of the Act and sentenced him to simple imprisonment for three months for the offence punishable under Section 304-A of the IPC without imposing any separate sentence for the other offences. The State Government as the prosecution agency appears to have found the sentence imposed on the respondent - accused to be quite lenient. It has therefore invoked the appellate jurisdiction of this court under Section 377 of the Cr.PC for enhancement of the sentence.

3. Since under Section 377 (3) the respondent - accused has a right to plead for acquittal, I have chosen to hear learned Advocate Shri Buddhahatti for the respondent - accused in the first instance. Learned Advocate Shri Buddhahatti for the respondent - accused has taken me through the entire evidence on record in support of his submission that the case against the respondent - accused could not be said to have been proved beyond any reasonable doubt. According to learned Advocate Shri Buddhahatti for the respondent - accused, the learned trial Magistrate ought to have relied on the defence version and ought to have come to the conclusion that negligence was on the part of the engine driver of the train in question. As against this, learned Additional Public Prosecutor Shri Rawal for the appellant - State has submitted that the learned trial Magistrate has carefully scanned and scrutinized the evidence on record and has recorded the finding of guilt against the respondent - accused and the impugned judgment and order of conviction does not call for any interference by this court in favour of the respondent - accused. Learned Additional Public Prosecutor Shri Rawal for the appellant - State has further urged that the learned trial Magistrate has very leniently dealt with the respondent accused in imposing the sentence for the offences proved against him though the offences were grave in nature inasmuch as fifteen lives were lost in the accident on account of rash and negligent driving on the part of the respondent - accused.

4. The prosecution has examined as many as three injured passengers of the Motor Vehicle in support of its case at trial. Their oral evidence fully supports the prosecution version. Nothing material could be brought about from their searching and severe cross-examination by and on behalf of the respondent - accused. The learned trial Magistrate has rightly relied on the evidence of the three injured passengers examined as prosecution witnesses Nos.1, 2 and 4 for fastening the criminal liability to the respondent - accused.

5. The Station Master of the railway station at Vagadiya was also examined as prosecution witness No.3 at trial. Of course, he was not an eye witness to the accident. He has however testified that the train did blow whistle before approaching the unmanned railway crossing. The prosecution also examined the Fireman of the engine and the Permanent Way Inspector travelling by that train as prosecution witnesses Nos.7 and 8. It clearly transpires from their evidence that the Motor Vehicle was entangled in the railway track of the unmanned level-crossing. The Fireman in his oral testimony at Exh.76 has clearly stated that the engine driver did apply both brakes to bring the speeding train to a grinding halt but it could not without colliding with the entangled Motor Vehicle on the railway track. Both the Fireman and the Permanent Way Inspector have clearly stated that the train was running at a speed of 70 to 80 kms. per hour. That speed so far as express trains are concerned on the railway track of that area can be said to be quite normal. In that view of the matter, the engine driver could not be held responsible for the mishap.

6. The defence version that there were no danger warnings on either side of the unmanned railway -crossing stands clearly falsified by the panchnama drawn of the scene of the accident and from the evidence of the panch witnesses examined at trial. It appears that the respondent - accused as the driver of the motor vehicle in question did not scrupulously followed the warning of stopping the vehicle and looking at both the sides of the railway track before crossing the unmanned level crossing. His version that the brakes failed at the relevant time could not be believed for the simple reason that, if the brakes were not in the working condition, he should not have set out with the marriage party in his motor vehicle. The brakes of a motor vehicle would not suddenly fail unless they have not been properly checked before undertaking any journey or without any material

damage caused to the vehicle in question. If proper checking of the vehicle was not done with respect to its brakes, the respondent - accused was again blame-worthy for not taking proper care in that regard. In any case, the accident has occurred on account of negligence on the part of the respondent - accused. It has unfortunately resulted in loss of fifteen lives and serious injuries to the remaining eight passengers. It is unfortunate that the respondent - accused was also injured in the mishap.

7. It may be noted at this stage that the accident had occurred soon after the Motor Vehicle was entangled in the railway track of the unmanned level-crossing. The fact that the passengers had no time for alighting from the Motor Vehicle would by itself be quite eloquent to show or to suggest that the respondent - accused was negligent in his attempt to cross hurriedly the unmanned railway-crossing. That by itself would speak volumes about his negligence.

8. In view of my aforesaid discussion, I am of the opinion that the learned trial Magistrate has rightly convicted the respondent - accused of the offences with which he stood charged.

9. Learned Additional Public Prosecutor Shri Rawal for the appellant - State is right in his submission that the learned trial Magistrate has very leniently dealt with the respondent - accused in the matter of imposition of sentence. The offence of negligent driving resulting in an accident and loss of fifteen lives is certainly a grave offence. The maximum punishment prescribed under Section 304-A of the IPC is imprisonment of either description for two years or with fine or with both. The learned trial Magistrate has imposed the sentence of simple imprisonment for three months only for the offence punishable under Section 304-A of the IPC. The learned trial Magistrate has imposed no sentence for the other offences of which the respondent - accused was convicted. Ordinarily, I would have accepted the appeal and would have enhanced the sentence which would be proportionate to the gravity of the offence. However, the question is whether it would be desirable to do so on the facts and in the circumstances of the present case at this stage. The accident in question occurred as back as on 3rd May 1984. More than 12 1/2 years have rolled by since then. It transpires from the material on record that the Motor Vehicle was practically smashed. It could be of no use. I do not think the respondent - accused could have got any compensation from the Insurance Company with which the motor vehicle was insured as he himself was found

guilty of rash and negligent driving at the relevant time. He was found to be a tort-feasor and, according to the well-settled principles of law, he could not have claimed any compensation or damages for the accident in question. He has thus suffered substantial economic loss on account of his own misdeed. In all probability, his licence might have been suspended. He has thus been deprived of his livelihood. That by itself would be a severe punishment. To enhance the sentence would aggravate the punishment suffered by him so far on that account. It is not desirable to do so when more than 12 1/2 years have rolled by since the date of the accident. In that view of the matter, though I find that the respondent - accused has very leniently been dealt with in the matter of imposition of the sentence for the offences committed by him, I do not think it fit on the facts and in the circumstances of the case to interfere with the order of sentence in this appeal.

10. Before parting with this judgment, I will fail in my duty if I do not record the note of appreciation for the valuable assistance rendered by learned Advocate Shri Buddhhabhatti who has been appointed to represent the respondent - accused in this case. It must be said to his credit that he got himself prepared soon after receipt of the Paper Book and was prepared to argue out the case on behalf of the respondent - accused though the matter was adjourned to 9th December 1996. It appears that he prepared himself very well with the matter.

11. In the result, this appeal fails. It is hereby dismissed.

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